Supreme Court, U.S.
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No. 99-1961

IN THE
# Supreme Court of the United States

LOCAL 227, UNITED FOOD AND COMMERCIAL WORKERS UNION,
*Petitioner,*

v.

WYANDOT, INC.,
*Respondent.*

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether, consistent with this Court's longstanding requirement that an arbitrator's award must draw its essence from the collective bargaining agreement and may not ignore the plain language of the contract, the lower courts erred in vacating an arbitrator's award where the arbitrator himself found the grievance had not been timely filed within the contractually defined deadlines?

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6) of the Rules of the Supreme Court of the United States, Respondent, Wyandot, Inc., states that it has no parent corporation, nor does any publicly held company own 10% or more of its stock.

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## JURISDICTION

Wyandot concurs with Petitioner's jurisdictional statement.

## STATEMENT OF THE CASE

Petitioner's Statement of the Case does not include crucial facts necessary to understand the proceedings and decisions below. Those facts are set forth as follows.

### A. The Parties Are Governed By A Collective Bargaining Agreement.

Wyandot and Petitioner, Local 227, United Food and Commercial Workers Union (the "Union"), are parties to a collective bargaining agreement ("CBA"). The CBA sets strict time limits for submitting grievances, which are deemed "waived" unless brought within the contractual time limits, either five or ten days. App. 43-44; Section 6.1, Step D; Section 6.2. A discharge grievance must be submitted in writing. App. 43; Section 6.1, Step C.

### B. The Union Failed To Timely Grieve The Termination At Issue.

Sue Pollard, a Union member, was discharged by Wyandot effective May 30, 1996, receiving the Company's termination letter on June 1, 1996. The Union waited until June 18, 1996, however, to present a written grievance. On June 20, 1996, the Company denied the grievance because it "was not submitted in a timely manner . . ." App. 40-41.

### C. Despite Finding That The Grievance Was Not Filed Within The Contractual Time Limits, The Arbitrator Issued An Award For The Union.

In a July 1, 1996 letter, the Union advised Wyandot that it was submitting Pollard's grievance to arbitration. App. 54. Pollard's Grievance was subsequently arbitrated before Arbitrator Fred Witney, who was presented with two issues at the hearing: (i) whether the grievance was arbitrable and, if so, (ii) whether Pollard was discharged for just cause. App. 46. On October 20, 1997, the Arbitrator issued an Award reinstating Pollard. App. 39.

The Arbitrator found that Wyandot discharged Pollard effective May 30, 1996, and that the written grievance protesting her discharge was not filed until June 18, 1996. App. 49. The Arbitrator also found that, under the CBA, following Pollard's discharge, "she or the Union had five (5) days (Section 6.2) or ten (10) days (Section 6.1) Step D to file the grievance." App. 53.[1] Witney acknowledged that "[t]here is no showing in the record that Wyandot has been lax in the enforcement of the time limits. Likewise, no testimony was offered by either side to show that time limits were either waived or extended in this case." App. 52.[2]

Despite this, the Arbitrator gave dispositive effect to the Union's July 1, 1996 letter advising Wyandot it was proceeding to arbitration, absent which "the Arbitrator would have denied

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[1] The CBA provides that "[t]he Arbitrator shall not have the authority to add to, ignore or modify any of the terms and conditions of the Agreement." App. 45; Section 6.7.

[2] In fact, Wyandot denied the Union's June 14, 1996 oral waiver request. App. 51-52. Such a waiver is the only contractually permitted means to avoid the effect of an untimely grievance submission. App. 45; Section 6.6.

Pollard's grievance upholding her termination." App. 54. Although "recogniz[ing], of course, that the above cited letter does not meet the time limits requirement; five (5) or ten (10) days, as incorporated in Section 6(2) and Section 6(1) Step D" the Arbitrator inexplicably found that "the letter overcomes whatever time limits defect it may contain." App. 55. The Arbitrator thus concluded that the Pollard grievance was arbitrable.

### D. The Lower Courts Vacated The Arbitrator's Decision, Finding That It Ignored Clear Contract Language And Thus Did Not Draw Its Essence From The Contract.

It was from this conclusion that Wyandot brought an action under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185, to vacate the Award. In his decision, District Judge John G. Heyburn, although recognizing that "courts have only extremely limited authority to review arbitration awards", and that an "arbitrator's factual errors and even misinterpretation of a collective bargaining agreement are not subject to reconsideration by the Court" (citing *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987)), vacated the Award, holding that "[t]he Arbitrator's finding that Pollard's grievance and the July 1, 1996 letter were timely fails to draw its essence from the CBA. Furthermore, the Arbitrator ignored the terms of the CBA in finding the grievance arbitrable." App. 28, 36.

With respect to the Union's primary contention before this Court, that the lower courts should have applied "the higher and more deferential standard for reviewing 'procedural' decisions set forth in *Misco*" (Petition, p. 6), which standard was acknowledged by the Sixth Circuit in *Interstate Brands Corp. v. Teamsters Local 135*, 909 F.2d 885 (6th Cir. 1990),

*cert. denied*, 499 U.S. 905 (1991), the District Court cogently reasoned:

> [T]he Union advocates that arbitrators' awards on procedural questions are subject to an even narrower standard of review than substantive decisions by arbitrators. To support this, the Union quotes *Interstate Brands* [ ]: "On questions of procedural arbitrability, 'a court's role is even more sharply circumscribed . . . [P]rocedural questions which grow out of the dispute and bear on its final disposition are the exclusive province of the arbitrator.'" [Citation omitted]. However, that isolated quotation seems to this court to give a misleading impression of the case. **Ultimately, the court found that procedural decisions regarding arbitrability are subject to the same standard of review as substantive decisions on the merits. That is, the procedural decisions must also draw their essence from the CBA**. *Interstate Brands*, 909 F.2d at 890.

App. 33-34 (emphasis added).

As set forth in Petitioner's Statement of the Case, the Court of Appeals affirmed the District Court, concluding, *inter alia*, that the District Court had applied the proper standard of review.

## REASONS FOR DENYING THE WRIT

Rule 10 of the Rules of the Supreme Court of the United States provides that this Court may grant a petition for certiorari only for "compelling reasons." According to Rule 10,

compelling reasons can be found, among other things, if the decision leading to the petition: contributes to a conflict of authority between the courts of appeal and/or state courts of last resort on an important federal question; reflects a departure from the accepted and usual course of judicial proceedings; presents an important federal question that has not been, but should be, settled by this Court; or conflicts with Court precedent concerning an important federal question.

The Union has not set forth an adequate basis to justify the exercise of this Court's discretionary jurisdiction. It does not and cannot contend that the decisions in the lower courts here have created a split of authority among the federal courts or between the federal and state courts. Nor does the Union explain how the issues to be addressed -- which revolve around unique factual circumstances and which are of interest only to the parties involved -- present an "important federal question."

The Union's primary basis for seeking review is that the lower court rulings were allegedly in conflict with this Court's *Misco* decision. Specifically, the Union contends that, under *Misco*, an arbitrator's "procedural" decisions -- including whether a grievance is time-barred pursuant to explicit contractual language -- may be set aside only if the arbitrator acted in "bad faith" or was guilty of "affirmative misconduct." (Petition, p. 4). The Union argues that, given the absence of such allegations herein, the Arbitrator's "procedural" timeliness decision -- "right or wrong" -- is controlling. (Petition, p. 6).

The Union's interpretation suggests that *Misco* offers a mandate for arbitrators to abjectly ignore contractual time limits in order to entertain otherwise time-barred grievances. Perhaps anticipating this criticism, the Union further contends that the Arbitrator did not depart from the essence of the agreement but was, instead, merely interpreting ambiguous contract language. (Petition, pp.7-8). Had the Arbitrator, in

fact, found the pertinent contract language to be ambiguous, thus requiring an interpretation, this argument might have some resonance. But in light of the Arbitrator's own conclusion that the grievance "does not meet the time limits requirement" established by contract, the Union's argument falls flat. App. 55. *See* App. 16 n.5 (Court of Appeals rejected the Union's ambiguity argument).

### A. The Standard Of Review Applied By The Lower Courts Does Not Conflict With *Misco*.

Despite its consistent deference to arbitral decisions, this Court has long held that an arbitrator's discretion is strictly circumscribed, as the "arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice." *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). Accordingly, the arbitrator's "award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." *Id.*

Attempting to give effect to this historical mandate, the Sixth Circuit has identified four factors to determine whether an arbitrator's award draws its essence from the collective bargaining agreement. *Dobbs, Inc. v. Local 614, Int'l Brotherhood of Teamsters*, 813 F.2d 85, 86 (6th Cir. 1987) citing *National Gypsum Co. v. United Steelworkers of America*, 793 F.2d 759, 766 (6th Cir. 1986); *Dallas & Mavis Forwarding Co. v. General Drivers, Warehousemen & Helpers, Local 89*, 972 F.2d 129, 134 (6th Cir. 1992), *cert. denied*, 506 U.S. 1051 (1993).[3]

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[3] Those factors look to whether the award: (1) conflicts with express terms of the agreement; (2) imposes additional requirements not

Given the *Misco* Court's reliance on *Enterprise Wheel*, nothing in *Misco* suggests that the Court intended to abandon those principles, so as to place arbitral timeliness decisions virtually beyond court review. *See Misco*, at 36, 38. In fact, *Misco* did not even address timeliness, let alone arbitrability. Instead, the Court considered application of a contract article entitled "Arbitration Procedure," which provided "some ground rules for the arbitration process", including "evidentiary matters." *Misco*, at 39. As to these matters, the Court chose to apply the standard of review found under the Federal Arbitration Act, under which "federal courts are empowered to set aside arbitration awards on such grounds only when 'the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy.'" *Misco*, at 40, citing 9 U.S.C. § 10(c).[4]

Given the source of the *Misco* "procedural" review standard, the very limited nature of that standard's application is readily apparent. Certainly, the Sixth Circuit has so held, refusing to find contractual grievance time deadlines to be the sort of procedural issues entitled to heightened deference under *Misco*. *Interstate Brands*, 909 F.2d at 890-91 (procedural decisions bearing on arbitrability, such as whether the grievance was timely filed, are evaluated like all other substantive claims and such awards must draw their essence from the contract). *See also AP Parts Co. v. United Auto Workers*, 923 F.2d 488, 491 (6th Cir. 1991) (noting that "[e]ven *Misco* . . . does not allow the arbitrator to 'ignore the plain language of the contract.'"), citing *Misco*, 484 U.S. at 36.

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expressly provided for in the agreement; (3) is not rationally supported by or derived from the agreement; or (4) is based on "general considerations of fairness and equity" instead of the exact terms of the agreement. *Dobbs*, 813 F.2d at 86; *Dallas & Mavis*, 972 F.2d at 134.

[4] This provision is now codified at 9 U.S.C. § 10(a)(3).

Consistent with that authority, the Court of Appeals and District Court found the contractually based deadlines to be substantive, going to the very arbitrability of the grievance, thus requiring the Arbitrator's Award to draw its essence from the contract. App. 11-13, 33-34. In doing so, the lower courts showed no infidelity to *Misco*, and this Court's continuing mandate that arbitral awards must draw their essence from the contract. *Misco*, at 36, 38.

This Court has not extended *Misco* in the fashion advocated by the Union, and the Court of Appeals' refusal to do so thus affords no basis upon which to justify granting certiorari. Indeed, to construe *Misco* in such a fashion would practically invite arbitrators to do just what the Court has repeatedly admonished against: to ignore explicit contract language and to dispense their own brand of industrial justice by permitting the arbitration of untimely filed -- and contractually barred -- grievances. This Court should not countenance such a result.

**B. The Arbitrator's Award Utterly Ignored The Pertinent Contract Language, And Thus Failed To Draw Its Essence From The CBA.**

Consistent with the *Misco* requirement that an "arbitrator may not ignore the plain language of the contract," *Misco* at 38, the District Court and Court of Appeals determined that the Arbitrator here did just that. App. 17, 31-32. Indeed, given the Arbitrator's findings that the Union's grievance did not meet the contractual time limits, and his further acknowledgment that those mandatory time limits serve to bar and completely dispose of an untimely grievance, there is not even an arguable basis to suggest otherwise. App. 53, 55.

The complete absence of a contractual basis for the Arbitrator's Award is apparent in the lower court decisions, which found that the award violated all four of the Sixth Circuit's *Dobbs* factors, any one of which was sufficient to vacate the Award. App. 14 n.3

In this regard, the District Court held that the Award:

i. "conflicts with the express terms of the collective bargaining agreement," by concluding that an untimely July 1, 1996 arbitration demand letter "somehow . . . cured timeliness defects." App. 30-31.

ii. "imposes additional requirements that are not expressly provided in the agreement," because it "requires the company to accommodate all written demands for arbitration. This is completely contrary to the deadlines expressed in the CBA not to mention the Arbitrator's own conclusion that all deadlines are mandatory." App. 31.

iii. "is without rational support or cannot be rationally derived from the terms of the agreement" because the July 1, 1996 "letter and the effect the Arbitrator gave to it is totally contrary to the clear terms of the CBA. This is not a case of misinterpretation to which the court must defer. **This is a case of no interpretation. This is an instance where the Arbitrator has ignored the language of the CBA.**" App. 31-32 (emphasis added).

and

iv. "[a]lthough . . . avoid[ing] . . .the terms 'fairness' and 'equity,'" these motivations must "underlie [the Arbitrator's] decision to ignore the CBA's deadline requirements." App. 32.

The Court of Appeals affirmed this analysis in its entirety. App. 15-18. The comprehensive nature of the lower courts' inquiry, and their thorough analysis and application of this Court's decisions, establish that this case presents no novel issues warranting discretionary review.

## CONCLUSION

Petitioner's primary argument in favor of a writ of certiorari is that an arbitrator's "procedural" timelines decisions are essentially off limits to court review. While this seriously misconstrues the *Misco* decision, the result advocated by Petitioner would effectively dismantle years of precedent requiring that arbitration awards draw their essence from collective bargaining agreements, and not dispense the arbitrator's brand of industrial justice. Given the lower courts' well-reasoned opinions, it is simply unnecessary for the Court to exercise discretionary review. Respondent respectfully requests that this Court deny the Petition.

Respectfully submitted,

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